ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Pertaining	)	RM-8012
to the Equal Access Obligations	)	
of Cellular Carriers	)	

To: The Commission

COMMENTS OF CELLWAVE, INC.

Cellwave, Inc. ("Cellwave") [1/], by its attorney and pursuant to Section 1.405(a) of the Commission's Rules, 47 C.F.R. § 1.405(a), hereby submits its comments in opposition to the petition filed by MCI Telecommunications Corporation ("MCI") for the institution of a rulemaking proceeding to impose equal access requirements on the cellular industry. See MCI, Petition for Rulemaking, RM-8012 (filed June 2, 1992) [hereinafter "Petition"].

I. Background

1. Only the cellular operations of the Bell Operating Companies ("BOCs") are now subject to equal access requirements. Those requirements were imposed on the BOCs as an outgrowth of the AT&T divestiture decree. [2/] Equal access was intended to prevent BOCs from abusing their monopoly position in local exchange service. That concern does not apply to the competitive cellular industry generally, and it has absolutely no relevance to small, stand-alone carriers, such as Cellwave.

1/ Cellwave is the Block A Cellular licensee in the Ohio 6 Rural Service Area.

2/ United States v. American Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

2. MCI does not establish that "non-BOC" carriers have monopoly power sufficient to justify the industry-wide imposition of equal access safeguards. Rather, MCI presents a rather simplistic argument -- because BOC cellular customers can presubscribe to a preferred interexchange carrier, all cellular customers should be given "freedom of choice". See Petition, at 4-5.

3. It is one thing to impose the extraordinary financial burdens of equal access on dominant carriers; it is quite another to place those burdens on small, start-up cellular operators. As Cellwave will demonstrate, the cost of imposing equal access requirements on all cellular licensees outweighs the purported benefits.

II. Argument

A. Equal Access Requirements Could Undermine The Cellular Industry's Competitiveness

4. MCI seems to suggest that the cellular industry is now mature enough to withstand equal access regulation, and therefore equal access should be imposed. See Petition, at 1-4. MCI's approach is flawed, because it compares cellular with wireline local exchange service. The cellular industry should be viewed in the larger context of the mobile services industry, wherein cellular operators face competitors not subject to equal access.

5. While the cellular industry has matured, so has the mobile service industry at large. Cellular competes with Specialized Mobile Services ("SMR"), paging, and most recently, personal communications services ("PCS") in its experimental stages. Comparison with these other segments of the mobile ser-

vices markets is a more appropriate comparison than with the local exchange carrier industry. 3/

6. No equal access obligations are imposed upon these competitive mobile services. To the contrary, the Commission seeks to ease regulatory burdens on such services, most recently with respect to SMR and PCS. 4/

7. The Commission is clearly committed to a less burdensome regulatory environment for mobile services, the result of which should be a more competitive mobile services marketplace. MCI's request for greater regulation of cellular is therefore at odds with the Commission's deregulatory policies. The Commission should not hamstring cellular operations via regulatory measures such as equal access requirements, at a time when other mobile services are being relieved of regulatory burdens.

B. The Burdens Of Equal Access Regulation Outweigh The Supposed Benefits

8. The increased regulation of cellular operations suggested by MCI would not benefit the public. Among other things, it would add costs to existing cellular operators. Those

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3/ The basis for imposing equal access on local exchange carriers was that they controlled local bottleneck facilities. Such is not the case with cellular facilities.

4/ For example, rules were recently adopted "that will substantially reduce the administrative burden on SMR end users, SMR base station licensees, and the Commission." See Report and Order in PR Docket No. 92-79, FCC 92-359, at 5 (rel. Aug. 31, 1992). The regulatory scheme for a PCS industry is in the evolutionary stage. Yet, the Commission expects PCS to be a "highly competitive service" and regardless of the regulatory classification, the Commission has tentatively concluded that PCS should be subject to "minimal regulation". See Notice of Proposed Rulemaking and Tentative Decision in Gen. Docket No. 90-315, FCC 92-333, at 37 (rel. Aug. 14, 1992).

costs will inevitably be passed along to consumers, with little or no benefit to them.

9. It is unclear what, if any, benefits the public will reap from imposing equal access on cellular licensees. Under the current regulatory environment, Cellwave is able to provide turn-key services to its subscribers, a single bill for services, and benefits in the form of lower interexchange rates or expanded local (intraLATA) calling areas.

10. Like most cellular entities, Cellwave can purchase interexchange service at favorable bulk rates from facilities-based carriers or resellers. These lower rates can be passed along directly to Cellwave's subscribers, or indirectly through the establishment of larger local (interLATA) cellular calling areas. Further, in the current environment, subscribers can choose an alternative provider by dialing "10XXX" at the many conforming end offices.

11. Certainly, it sounds good to afford subscribers "freedom of choice". However, it is not at all clear whether that "freedom" is practicable to provide or will result in lower overall costs to subscribers. MCI has not shown, for example, that customers could purchase cellular and interexchange services separately "on an unbundled basis" at less cost than obtaining both services from the cellular carrier.

12. Implementing and administering equal access is extraordinarily expensive, and start-up cellular companies cannot spread those costs over a large customer base. The resultant

increase in cellular rates can be expected to offset any marginal decrease in subscriber interexchange service costs.

III. Conclusion

13. MCI has not demonstrated that imposition of equal access regulation on cellular licensees is in the public interest. If additional regulatory burdens are to be placed on cellular operators, they should be imposed only in areas critical to the cellular industry. Equal access should not be lifted wholesale from the local exchange arena, to bestow a financial "windfall" on interexchange carriers in the cellular marketplace, simply because it sounds good to give cellular customers "freedom of choice".

Respectfully submitted,

CELLWAVE, INC.

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September 2, 1992

CERTIFICATE OF SERVICE

I, Katherine A. Baer, secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 2nd day of September, 1992, sent by first-class United States mail, copies of the foregoing COMMENTS OF CELLWAVE, INC. to the following:

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